

# What Really Happens in a Maryland Workers' Compensation Claim

*A Guide for Injured Workers*

**By Clifford Sobin, Esq.**

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FELDMAN  DARBY LLP

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#### **Disclaimer**

**\*IMPORTANT\*** The information provided here is only an overview of the law as of January 2014 and is not a substitute for experienced counsel! The principles of law stated vary from state to state and can change in Maryland at any time due to statutory, regulatory or appellate changes. This book should only be used to assist you to understand the legal issues presented by your injury. It is not a substitute for retaining an attorney.

#### **Introduction**

Were you injured at work in Maryland while working for an employer other than the Federal Government?

Then this eBook is for you.

I wrote this eBook for injured workers – not lawyers. It is basic and practical – not complex and nuanced. I want to replace any fears and uncertainty you may have with knowledge and understanding. I want you to know how long things take, why things happen, and what to expect. This eBook is not a replacement for obtaining legal advice from an attorney, but is a supplement to help educate and insulate you from some of the surprises that otherwise may come your way.

I have represented thousands of injured workers in Maryland over more than thirty years. I wrote and continue to update a 1400 page two volume workers' compensation legal treatise for Maryland lawyers. I taught attorneys Maryland Workers' Compensation law, testified before the Maryland Legislature on many proposed Workers' Compensation bills and continue to speak at many Union meetings concerning the "nuts and bolts" of Maryland Worker's Compensation.

Now, I want to help you.

Do you need medical treatment as a result of your injury? Are you worried how much the insurance company will pay you while you are unable to work? Are you physically unable to ever return to the type of work you were doing? How much money will you receive at the end of your case? Do these questions concern you?

Then this eBook is for you.

What is the role of an insurance company in a workers' compensation case? Should you hire an attorney and what will it cost? Do you have to go to a doctor chosen by the insurance company for an evaluation? What will happen when you go? Do you have to speak to the nurse case manager when she calls or the vocational counselor who keeps telling you what to do? Do you not know the answers to these questions?

Then this eBook is for you.

Why is your check late? Why won't the insurance company approve your treatment right away? Why aren't your bills paid timely? Is that person following you around with a camera really a private investigator? Have you wondered why these things happen in your case?

Then this eBook is for you.

What happens at a Maryland Workers' Compensation hearing? How long does it take to get one? How is evidence presented? How long will it take to get a decision? What if you want to appeal the decision? Do you want to know the answer to these questions?

Then this eBook is for you.

## About the Author

I am the managing partner of Berman, Sobin & Gross, Feldman & Darby LLP. We focus our efforts on:

- Assisting Maryland employees injured on the job with their Workers' Compensation claims
- Aiding Maryland and District of Columbia residents with their wills and estate issues
- Working to obtain recoveries for victims of car accidents, medical malpractice and other forms of negligence
- Helping injured railroad employees with recovering compensation for their injuries (FELA) and (FRSA)
- Obtaining Social Security Disability benefits for those in need

I also maintain a Maryland Workers' Compensation blog (<http://wcblog.bsgfdlaw.com/>) and I am the author of most of its content.

In addition to the law, I have an avid interest in travel, database programming, wildlife and Middle Eastern history.

My philosophy is to educate clients as part of the process of representing them for their Workers' Compensation claims. Since no comprehensive guide exists for people who suffer injuries on the job in Maryland, I decided to create one. Plenty is available for lawyers, nothing for you.

The eBook format provides a great opportunity for filling that gap. I first published an eBook concerning travel in Jackson Hole. I have used that experience to bring this product to you. Whether you are represented by my firm or not, if after reading this you feel a bit more secure due to increased understanding of the Workers' Compensation process I will have succeeded.

## Part A – The Law

### Chapter 1: What Is Workers' Compensation?

The purpose of Workers' Compensation is to protect employees. What you may not know is that it was designed to protect employers and the public as well. Without that grand bargain, it probably never would have been enacted as law by the Maryland Legislature in 1914, not to mention all 49 other states in the United States and in many countries around the world.

So who gets what protection?

#### The Employee

You have the right to relief from paying medical bills related to your workplace injury. You may also claim:

- Financial assistance while unable to work due to your injury.
- Permanent disability benefits if your injuries are permanent.
- Assistance in finding other work if you cannot return to your former employment.
- Financial protection for your dependents if you die.

Unfortunately, you do not automatically get those benefits. You have the burden of proving your right to receive them. You do not have to prove somebody else caused your injury. In fact, you retain all of your rights under Workers' Compensation law even if the injury was caused by your own negligence.

### Employers

Employers receive a significant benefit from Workers' Compensation.

- First and foremost, an employer with workers compensation insurance coverage may not be sued for the injury even if the employer was negligent. That means *an employer does not have to pay for any of your pain and suffering.*
- Second, employers are able to predict and control (with much more certainty than in negligence claims) the amount of their financial exposure for the injuries their employee sustained.
- Third, the amount you may receive is limited and the amount a medical provider can charge is controlled.
- Fourth, when they want to, an employer is able to litigate claims at less expense than in a traditional negligence world.

### The Public

The social benefits of workers' compensation law are profound. The public is protected from the potentially overwhelming tax burden of caring for and supporting employees who are injured on the job and have nowhere else to turn. Likewise, both the public and employees benefit from the fact that the financial costs of injured workers are borne by their employers. As a result, employers have an incentive to provide a safe work place. A safer workplace means less injuries, lower insurance premiums, and higher profits.

## **Chapter 2: Types of Workers' Compensation Claims**

Not all injuries on the job are covered. But most are.

Technically, an injury must be an accidental injury, an occupational disease or fall within the narrow statutory definition of a hernia. So, let's go into a bit more detail as to what this means.

### Accidental Injury

An injury caused by an unexpected, unintended or unusual event, such as lifting or falling, will be covered if it "*arises out of*" and "*in the course of employment*". A careful reading of the last sentence reveals three conditions that must be satisfied:

- 1) *The event (usually a specific one), must be unexpected, unintended or unusual* – If you intended to hurt yourself it will not be covered. If what you were doing would not cause an injury normally, it might not be covered.

Therefore, if you suddenly develop pain while walking, that may not be an accidental injury. However, almost all events, no matter how trivial, are covered if you did anything unusual. Thus, if you carried too much, or reached too far, it is important to tell your physician and report that fact to your employer.

- 2) *Arising out of and in the course of employment* – This simply means did the injury occur as part of the risks of your employment? Did something about your job cause your injury or would it have happened anyway?

For example, if you have a cold and sneeze while working resulting in an injury to your back, your back injury is not covered because the sneeze had nothing to do with your job. However, if you are working in a dusty environment and that caused you to sneeze the claim would be covered.

- 3) *In the Course of Employment* – You must be working on behalf of your employer when you are injured for your claim to be covered. This does not mean you need to be getting paid when you are injured.

Company picnics benefit employers because they increase company morale. An injury caused by tossing a football at a Sunday picnic may well be covered.

However, commuting is something you have to do in order to get to work.

Therefore, injuries while on your way are normally not covered, but injuries that happen once you get into the company parking lot are.

As you can see, the "course of employment" standard is rather blurry. It is no wonder that there have been many appellate cases on the subject.

### Hernias

A hernia is a protrusion of tissue through an opening in the body where there shouldn't be one. The law regarding hernias, just like the injury, is a bit odd to say the least. The injury must:

- Be caused by a strain
- Notice of the hernia must be given to the employer, without exception, within thirty days of it occurring
- The hernia must be treated, when practicable, by surgery. It is the only type of injury where you are forced to have surgery or face a reduction in benefits.

### Occupational Diseases

Classic occupational diseases in a workers' compensation setting run the gamut from lung disease resulting from breathing toxic materials to carpal tunnel syndrome from repetitive

motion disorders. What separates these disease processes from accidental injuries is that they occur due to long term exposure to something in the employment.

It would be nice if I could clearly describe what an occupational disease is, but to do so, I would have to do better than the Workers' Compensation Statute or Maryland's Appellate Courts. Nevertheless, I will tell you formally what the law says, and then interpret for you what that really means.

The law states that an occupational disease is a condition that may reasonably be attributed to either:

- 1) The nature of the employment in which the hazards of the disease exist; or
- 2) If the disease is one that is known to be caused by exposure to biological, chemical or physical agents that the employee was exposed to as part of the employment.

If that is not confusing enough, the statute adds an additional requirement – the injured worker must have a *disablement* as a result of the injury. More than twenty appellate opinions have attempted to bring clarity to these ambiguous requirements. They failed. Let's see if I can:

- First - Understand specifically what you do for your employer and what your duties expose you to. Then evaluate whether what you do exposes you to a higher degree to your medical condition than the general public.  
For example, many people develop carpal tunnel syndrome for many reasons. However, if your job is to run groceries over a scanner you are doing many more repetitive activities than the general public. If you develop carpal tunnel syndrome, it very likely is caused by your job.
- Second – Were you exposed to the work conditions for a long time? The longer the time period, the more likely your condition is job related compared to a normal hazard of life.
- Third – There may be other factors unique to you that make it less likely your condition is job related.  
For example, if you have diabetes (a known cause of carpal tunnel syndrome) proving your case will probably require more occupational exposure to repetitive motions than otherwise.
- Fourth – Consider the question of disablement. If you miss time from work due to your injury, it is almost always considered a disablement (despite an unfathomable statement in one appellate opinion to the contrary). But what if you are able to work but need medical treatment? Not so clear. If a case can be made that "but for" the treatment you would have to miss work perhaps that is a disablement. If you only take over the counter medication to control the symptoms of your injury or disease that probably is not a disablement. It isn't right, but it is the present state of the law.

### **Chapter 3: Additional Protection for Public Safety Workers**



Public safety employees receive increased protection under Maryland's Workers Compensation Act, as they should, since they risk their lives for us every day. If you are a public safety employee, the added protection comes in the form of a presumption that if you develop certain specified medical conditions, they are considered an occupational disease.

So, does a *presumption* mean that if you have the condition it is automatically job related? No. It also, in almost all circumstances, does not relieve you of the obligation of proving a disablement as discussed in the Chapter 2 for general occupational diseases.

However, the presumption does mean that you don't have the burden of proving the condition was caused by the job. Instead, your employer has the burden of proving it is not. This is a tall order that they usually cannot meet.

The following is a general list of diseases that are presumed to be caused by the job, sorted by job classification. Many of the diseases and job classifications contain exceptions or twists that often require the assistance of an attorney to navigate.

#### Occupations and Presumptions

**Paid – Fire Fighter, Fire Fighting Instructor, State Fire Marshall,**

**Volunteer – Fire Fighter, Fire Fighting Instructor,**

**Volunteer – Rescue Squad Member, Advanced Life Support Unit Member**

- Heart disease
- Hypertension
- Lung disease
- Leukemia
- Pancreatic cancer
- Prostate cancer
- Rectal cancer
- Throat cancer

For Workers' Compensation claims filed after May 31, 2013

- Multiple myeloma
- Non-Hodgkin's lymphoma
- Brain cancer
- Testicular cancer
- Breast cancer
- Pancreatic cancer is no longer presumed

**Police officer – County, State, Municipality, airport authority, or MNCPPC**

- Heart disease
- Hypertension

Deputy Sheriff – **Baltimore City, Montgomery, Ann Arundel, Prince Georges, or Alleghany County**

- 
- Heart disease
  - Hypertension

Correctional Officer – **Montgomery County and Prince Georges County**

- 
- Heart disease
  - Hypertension

Paid Law Enforcement employee of the Dept. of Natural Resources

- 
- Heart disease
  - Hypertension
  - Lyme disease

Any employee of the Dept. of Natural Resources

- 
- Lyme disease

## Chapter 4: What Benefits are Available?

If you have sustained a compensable injury on the job, there are significant medical, financial and vocational benefits available to you. I am warning you ahead of time, the concepts are confusing. This chapter merely summarizes them, a bit later in this eBook I will explain them. Here they are:

- 1) Full payment for all causally related medical treatment - If the treatment is in Maryland it is paid per a fee schedule. Maryland physicians may not charge more. Treatment outside of Maryland is paid under the same fee schedule, but there is no protection for you if the health care provider wants to charge more (see Chapter 9).
- 2) Payments while you are unable to work due to your injury and your condition is still improving - These benefits are called temporary total disability benefits (see Chapter 11). You will receive 2/3 of your average weekly wage (see Chapter 10) up to a maximum equivalent to the state average weekly wage for the year you were injured. If this sounds confusing don't worry, read Chapters 10 and 11.
- 3) Payments while you are working part time or on light duty due to your injury and your condition is still improving - These benefits are called temporary partial disability

benefits (see Chapter 11). You will receive fifty percent of the difference between your average weekly wage (see Chapter 10) and your present weekly earnings up to a maximum equivalent to fifty percent of the state average weekly wage for the year you were injured. Again, don't worry if you are confused, Chapters 10 and 11 will clear things up for you.

- 4) Vocational assistance for finding a new job if you are unable to return to your former job as a result of your injuries - While receiving vocational assistance (see Chapter 12) you may be entitled to 2/3 of your average weekly wage (see Chapter 10) up to a maximum equivalent to the state average weekly wage for the year you were injured.
- 5) Permanent disability benefits – You will only receive these benefits if your injuries are permanent. If so, you will receive a fixed amount based on the percentage of disability, the part of your body that was injured, your average weekly wage, and in some cases whether or not you are a Public Safety worker (see Chapter 13).

An important thing to remember about all of these benefits is that *you must prove your entitlement* to them. The insurance company may voluntarily pay some of them, especially for serious injuries immediately after they occur, but they will only grudgingly pay the rest, and even then only with lots of work by you or your attorney, frequent argument and often litigation.

## **Chapter 5: Who Pays The Benefits?**

### The Ultimate Payer

All Maryland employers must obtain workers' compensation insurance for their employees or qualify for "self-insured" status. Their choices are:

- Private insurers – Many insurance companies have been approved by the Workers' Compensation Commission to issue insurance policies.
- Self-Insured status – Some larger companies have obtained approval from the Workers' Compensation Commission to insure themselves. In order to do so they must prove yearly that they have the financial capability to pay the benefits required by law to their injured workers.
- Injured Workers' Insurance Fund (IWIF) – More than a third of Maryland employers, the State of Maryland, and many municipalities and volunteer fire fighter companies choose this insurer. IWIF was created by statute and acts like a private insurer but is a creature of government. If you are reading this after September 2013, this will change Insurance Fund will begin operations as a private insurer. It will take over some of the responsibilities of IWIF and/or contract with IWIF in some fashion.

If your employer fails to obtain workers' compensation coverage:

- They are still required to pay the benefits required by law to you and are subject to fines.

- The Uninsured Employers Fund (UEF) was established by law to ride to the rescue when an employer does not have insurance and does not pay. Well, sort of. The reality is that the UEF will eventually pay, but with big emphasis on eventually. Unfortunately, the procedural hurdles that must be navigated are sure to try the patience of even the most understanding person. Relief for you will eventually arrive in the form of full payment of benefits, but almost always not when you need them most; during the acute phases of your injury.

### Who Will You Deal With?

*Insurance companies will often have their own employees* adjust the claims. The term "adjust" is really a silly term. **These people work and manage claims for the insurance company. They do not work for you.** Their job is to dispense the minimum amount of benefits consistent with the requirements of the law. That does not make them bad people; it just means their loyalty is to the insurance company.

- *They pay voluntarily* when it benefits the insurance company to pay you, rather than pay the litigation and potential extra claim expenses of a court fight.
- *They fight* when they think money will be saved by saying no.
- *They don't tell you* when they think you don't know enough to claim specific benefits.

*You may have to deal with a third party administrator (TPA)* rather than an insurance company. A TPA is a company hired by either an insurance company or a self-insured employer to adjust/manage the claims. From your perspective there is little difference between dealing directly with an insurer or with a TPA – except for one. A TPA may have less authority to make decisions than an employee of an insurance company. Usually it does not cause any delay in payment of benefits during the course of a claim, but it can hinder resolving claims short of litigation.

Very infrequently, self-insured employers use their own employees to adjust claims. This may cause some problems/benefits for you not normally encountered with insurance company or TPA adjusters. The reason is that as an employee of the self-insured, a company adjuster may frequently be present in the warehouses, factory floor, or other locations where your fellow employees work. As a result the company adjuster may gain information about you from other employees and even from having met you before the injury. As a result, they sometimes form impressions, good or bad, that can impact how the claim is handled.

## **Chapter 6: Rules for Filing Claims**

### Filing a claim

*It is your responsibility to file your claim properly.* An Attorney can do it for you, your employer will not. Sometimes an insurance company will send you the proper forms, but don't count on it.

Your Workers' Compensation claim must be filed with the Workers' Compensation Commission in Baltimore on a special form provided by the Commission. The form your employer may show or give you shortly after you are injured is an Employer's First Report of Injury. It is **NOT** the claim form you must file!

If you have filed your claim appropriately, you will receive a document in the mail from the Workers' Compensation Commission with the title "Notice of Employee's Claim." The top right corner of the document will contain a claim number beginning with a letter (B for the last several years and W if filed electronically) and then six numbers. *If you have not received this form in the mail you have not filed a claim, no matter what you are told by your employer or their insurer.*

If you are not sure, or cannot recall, whether a claim was filed you may:

- Call the Commission at (800) 492-0479.
- Check on the Commission's web site at [www.wcc.state.md.us/](http://www.wcc.state.md.us/)
- Call my law firm at (301) 670-7030, or another law firm. We can check immediately for you via the internet.

#### How Long Do You Have to File Your Claim?

The safest answer is you should file as soon as possible. However, the exact answer depends on the type of injury or claim you are making. Deadlines at present are as follows:

- *Accidental Injury* - Sixty days from the date of the accident is the technical answer. However, except for the extremely unusual incidence where your employer has been prejudiced by the delay, you really have **two years** from the date of the accident.
- *Occupational Disease* - **Two years** from the date you knew or had reason to believe that you were suffering from an occupational disease that causes you a disablement (often this means that a doctor told you your condition is job related and you missed time from work).
- *Hernia* - **Two years** from when you were injured, but you must have notified your employer of the injury within **thirty** days of the injury.
- Deaths due to accidental injury – Your beneficiaries have **eighteen months** from the date of your death.
- Deaths due to occupational disease – Your beneficiaries have **two years** from the date of your death.

Sometimes there are ways to overcome the deadlines if your claim is not filed timely. However, since the arguments are usually based on employer conduct, and/or in some cases your knowledge, they are difficult and without guarantee of success. It is far better to file your claim on time!

## Part B – What Really Happens

### Chapter 7: The First Week After Your Injury

What you do during the first week after being injured on the job will set the tone for the rest of your claim. *It is the most important time.* You must:

- Report the injury to your employer.
- Get medical treatment as soon as possible. Don't let several days pass.
- Give an accurate history of the injury to your medical provider.
- Don't speak to the insurance company unless you are sure you are not going to get an attorney (a decision that almost always is a bad one).
- If you want an attorney, choose one who will guide you, educate you, and that you trust. If the conversation is only about money, consider choosing another attorney.
- File a Workers' Compensation claim.
- Choose a doctor for follow up care and obtain authorization to go.
- Decide if you are going to speak to a nurse assigned by the insurance company to your case.

If you make the wrong decisions, you might make it difficult to win your case. The insurance company may deny your claim. What you say or do in the first days after you are injured matters once you are in front of a Commissioner. Even if the insurance company pays benefits in the beginning, when the inevitable disagreement with the insurance company occurs, you will not be in a position to obtain a speedy hearing in front of the Workers' Compensation Commission if a claim was not previously filed appropriately.

#### What You Do Matters

You should report your injury to your employer immediately after it occurs and at worst not later than the next day. Never wait until Monday to report an injury that occurred on Friday. If your injury was not witnessed by anybody else, you risk it will be assumed you hurt yourself over the weekend and are now lying.

Always get prompt medical treatment and tell the doctor what happened. If for some reason you did not report the injury to your employer but told the emergency room you were injured on the job earlier that day that will usually be enough to win your case if the insurance company contests it. Furthermore, by getting the treatment immediately:

- You get the care you need when you need it.
- You protect yourself from the insurer arguing you had a new injury between your job related injury and the medical treatment you are now receiving.

You should not speak to the insurance company without having hiring, or at least meeting with, an attorney. Workers' compensation is an extremely complex area of law. The insurance adjuster is experienced in finding reasons not to accept a claim. You are not experienced with

dealing with insurance adjusters looking for reasons not to pay you. Your desire to be helpful to the adjuster may be hurtful to you. Instead, you should have an attorney control all communications with the insurer.

You should also have the assistance of an attorney when your Workers' Compensation claim form is filed. It matters what is written on the form. It matters even more if you have not reported all the details of your injury to the employer or if your doctor did not write down the correct history of the injury you provided. The average weekly wage you write in the claim form matters as well. It is up to the insurance company to dispute whatever you claim. If you state too low a number because you are not clear on the law, will the insurance company correct it? You already know the answer to that.

Your choice of medical provider can have a significant impact on the future of your claim. Some doctors are better than others. Some injuries require specific medical specialties. Your attorney can guide you through this unfamiliar territory.

Frequently, insurance companies assign nurses to manage the medical aspects of compensation claims. They will attempt to contact you, your doctor and be present at your medical appointments. They are often beneficial in catastrophic cases. However, the value of having them versus the risk they present is an issue, especially with less severe injuries. The insurance company will obtain information through their involvement that they may otherwise never know. Also, nurses often pressure health care providers to do things that you might not welcome. That is why most attorneys place stringent ground rules on their involvement. Furthermore, experienced attorneys have a much greater sense of which nurses can be trusted and which nurses cannot. You should never speak to one without the assistance of counsel.

The bottom line is that the first week after an injury is the scariest and most dangerous time for you. The injury is scary because of the pain it is causing you and your fears of how it will impact your future. It is also dangerous because your actions, non-actions, statements, and non-statements may haunt you throughout the rest of your claim.

## **Chapter 8: Should You Give a Recorded Statement to the Insurance Company?**

The simple answer is NO! The insurance company represents your employer. It is in the business of saving your employer money. The adjuster has been trained to obtain information from you that may be used to deny your claim or to reduce the amount of benefits paid to you. Since there is no legal requirement for you to speak with them, you should politely refuse to do so.

Recording your statements does not benefit you - only the insurance company! Not all injuries on the job are covered. Therefore, the adjuster will often phrase their questions in a manner in which you are subtly encouraged to say things that will not help you or leave out things that will. Any failure by you will be used by the insurance company against you. In addition, they may ask for information that you are not required to provide. The adjuster will ask for

permission to record their conversation with you. Without your permission they cannot do it. *Don't give it.*

Even if the insurance company has accepted your claim, you still should not speak directly with the adjuster, whether or not it is recorded. This is for several reasons:

- Anything you say may be used against you.
- You may inadvertently provide information the adjuster has no legal right to know.
- When you are the victim of an injury it is very difficult to maintain objectivity and be respectful. However, your failure to do so may well cause the adjuster to look for ways to deny you benefits!

The bottom line - the insurance company and you generally have opposite interests. You want to be treated fairly and with dignity and respect. The insurance company has only one main interest - to reduce the amount your claim will cost them.

Would you play poker without knowing the rules before the cards are dealt and the betting begins? I think not. Therefore, since your Workers' Compensation claim often involves the highest stakes, you should never risk any conversation with the insurance adjuster! They know the rules - you do not!

## **Chapter 9: Medical Treatment – Rights, Authorization and Payment**

### Your Right to Medical Treatment

You have the right to receive medical treatment in Maryland, free of any charge to you, if it is reasonably related to your injury on the job. If your treatment is not in Maryland, generally the insurance company will only have to pay bills up the Maryland fee schedule. Any additional charges are your responsibility unless the medical provider voluntarily waives them.

Your Treatment rights include payment of:

- Hospital bills
- Prescriptions
- Doctor bills
- Physical therapy bills
- Mileage reimbursements for travel to health care providers
- Medically necessary equipment

However, there is also a hard truth. You have the right to claim treatment, but the insurance company may object, delay or ignore your request. The solution often requires a hearing before the Maryland Workers' Compensation Commission. At the hearing, your testimony and medical



reports from your doctors are presented to a Commissioner. The Commissioner then decides whether to approve or deny the treatment.

How can it be that your medical needs are not immediately taken care of? It is because you always have the burden to prove the treatment requested is:

1. Related to your injury on the job; and
2. Reasonably likely to be beneficial.

Therefore, your right to medical care under a Workers' Compensation claim is not as extensive as when you submit bills to a normal medical insurer. In that instance, you and/or your employer has paid an insurance premium that entitles you to payments for medical care. Workers' Compensation settings are adversarial. Your right to payment flows from your injury, not a contract.

Your medical insurer usually will not pay bills for treatment unless the workers' compensation insurer has first denied payment. This is true whether or not you chose to file a workers' compensation claim.

#### Authorization for Treatment

Generally, workers' compensation insurance companies give the responsibility to authorize treatment and payment of medical bills either to the adjuster responsible for the case, or a nurse or other individual in their medical department. Most medical providers require something in writing from the insurance company before they will begin treatment. In broad terms, you can expect the following if everything goes well:

- Initial treatment immediately after an injury – First visit is often approved with a phone call from the medical provider, you or your attorney. This will usually take less than a week.
- Follow up care – Almost never approved prior to receipt of a written report from the health care provider. It can take one to three weeks unless your health care provider takes longer to generate a medical report. Most doctors require a letter requesting a report, they then send a bill, and once the bill is paid they start writing the report. Unfortunately, many delays are experienced because of delays by doctors in writing the necessary report.
- Surgery – Almost never approved without the insurance company first sending you for a medical exam from the doctor of their choice. Usually it is prudent at this stage to request a hearing since the wait is generally 4 to 12 weeks for the insurance company to give an answer
- Chronic Care (long term pain medication, etc.) – As long as the medical provider provides medical reports often there is minimal disruption. However, as soon as the

prescriptions or prescription dosage are changed, significant disruptions may occur. Often the first inkling of a problem is not until you go to the pharmacy to fill your prescription.

### Payment of Bills

Most bills for medical treatment pre-approved by the insurance company are paid without too much difficulty. However, what will be most frustrating for you is that your first knowledge of a problem may occur when you receive a letter from a collection company. Or even worse, when you apply for a loan, and find something on your credit report. Delay in payment is often caused by:

- The health care provider's failure to send the bill to the proper place.
- The adjuster not having a medical report that corresponds to the bill.
- The bill not in a proper (HCFA) form.
- Laziness or incompetence of the insurance company adjuster.
- Insurers questioning whether your treatment is reasonably related to your injury.

It's a different story with reimbursement of your mileage expenses for traveling to medical providers and out of pocket expenses. The requests often languish on an adjuster's desk for long periods of time with complete disregard for the financial hardship it causes you. Why does this happen? Because:

- Mileage reimbursement requests are matched up to medical bill documentation that proves a visit happened on the day you stated. Your mileage claim is then often confirmed by utilizing internet mapping services that provide round trip mileage. This takes time that an adjuster may not have or not want to take. It isn't right, but that is the reality of it.
- Out of pocket expense reimbursements require proof you paid them (cancelled check, receipt, etc.). You then receive reimbursement if the bill was not already paid per the medical fee schedule and the adjuster has a medical report that substantiates the need and relationship of the treatment to your injury.

In the end, if there is a dispute without hint of resolution, a hearing request before the Workers' Compensation Commission is required. Frequently, the hearing is never held because the day before it is scheduled the insurance company agrees to pay the disputed bill or reimbursement, an order is passed and the issue resolved ... at least until the next bill or reimbursement request crosses their desk.

It is a never ending battle.

## **Chapter 10: The importance of Your Average Weekly Wage Calculation**

Your average weekly wage (AWW) has a significant impact on the amount of benefits you may be entitled to receive as a result of your injury. This is because all monetary payments paid to you are calculated as a fraction of your AWW. It impacts:

- How much compensation you will receive when you are unable to do any work
- How much compensation you will receive when you can only do part time or light duty work
- The vocational rehabilitation benefits you may be entitled to if you cannot return to your prior job
- The amount of permanent disability benefits you will receive
- The amount of dependency benefits your beneficiaries will receive if you die of your injury.

Usually, your average weekly wage (AWW) is based on the fourteen weeks immediately before you were injured. To calculate it, total your gross pay before taxes for the 14 weeks before your injury and divide by 14. The answer, rounded up to the nearest dollar, is your AWW. If you earn \$15.00 an hour and sometimes you work overtime and sometimes you miss work, your AWW determination might be based on the following example:

#### Week - Earnings

Week 1 - \$600 (40 hours worked)  
Week 2 - \$570 (38 hours worked)  
Week 3 - \$600 (40 hours worked)  
Week 4 - \$510 (34 hours worked)  
Week 5 - \$690 (44 hours worked)  
Week 6 - \$780 (48 hours worked)  
Week 7 - \$600 (40 hours worked)  
Week 8 - \$600 (40 hours worked)  
Week 9 - \$600 (40 hours worked)  
Week 10 - \$600 (40 hours worked)  
Week 11 - \$690 (44 hours worked)  
Week 12 - \$690 (44 hours worked)  
Week 13 - \$480 (32 hours worked)  
Week 14 - \$600 (40 hours worked)

Total Gross Pay = \$8610.00

AWW =  $8610/14 = \$615.00$

As you can see in the example, some weeks show less than 40 hours worked, others include overtime and all are gross pay before taxes. A 40 hour work week pays \$600.00 (40 x \$15.00/hr). However, by including overtime and weeks when less than 40 hours were worked, your AWW is \$615.00, \$15.00 more than what is paid in a normal 40 hour week. As a result, you will receive \$10.00 more a week while out of work than if the normal 40 hour week was used as a basis for payments.

The AWW calculation *does not include fringe benefits such as medical insurance or pension payments*. The AWW calculation does include housing, lodging, meals or rent you received as part payment for your services.

The AWW wage calculation may increase if:

- The fourteen week snapshot does not fairly represent your AWW
- You missed a period of time within the 14 weeks for a reason that is not likely to be repeated on a regular basis (death in the family is one example)
- You received a raise during the 14 weeks that is not reflected in all of the 14 weeks (your pay rate increased by a dollar an hour two weeks before you were injured)
- By virtue of your age, education and experience, the AWW does not fairly reflect what your AWW would have been during the period you suffer from your injury (You are seventeen and suffer a terrible injury while working ten hours a week and going to school).

You should never blindly accept the AWW determination made by the insurance company. Make sure it is an average of all of your wages, and is based on gross pay, not net after taxes.

## **Chapter 11: Payments to Injured Workers While Not Working or Working at Reduced Capacity**

You are entitled to be paid compensation during your "healing period" if you cannot return to your job. You will receive two-thirds of your average weekly wage (AWW) up to a maximum of Maryland's AWW for the year of your injury (\$998.00 for 2014). This is called "temporary total disability benefits" or "TT". \_\_\_\_\_

TT is paid as long as:

1. You are unable to return to your normal job;
2. Your employer does not provide another job within your physical limitations;
3. You have not yet reached maximum medical improvement;
4. You are not working anywhere else.

TT payments are tax-free.

The principle of TT is best explained by imagining your arm was amputated in an accident on the job. While you are recovering, whether it takes six months or six years, you are entitled to TT benefits. However, when you return to work, or have reached maximum medical improvement (the stump has healed to the point that it will not get any better and the doctor just needs to see you every few months), *the insurer may stop paying TT benefits even though you have not returned to work.*

Some employers will pay full salary benefits instead of TT. This is fine as long as:

- You are not using your sick leave.
- You are not lulled into forgetting to file a workers' compensation claim properly.
- You have not worked overtime in the three months before you were injured (your TT rate might be higher than the amount you clear when paid for 40 hours a week)

Other employers will pay two-thirds of your benefits as TT and the remaining one-third of your normal salary in some form of disability pay. You should make sure the payroll department does not inappropriately withhold taxes in these instances.

Sometimes you may be able to return to a lighter duty job or to the same job for a reduced amount of hours per week. If you have not reached maximum medical improvement, you are entitled to receive temporary partial benefits (TP). You may claim 50% of the difference between your average weekly wage before your injury and what it is while on restricted duty. It is capped at 50% of the maximum TT rate for the year of the injury (\$499.00 for 2014). Many claimants fail to make a claim for TP benefits when they return to a light duty full time job but are not eligible for overtime because of their restricted status. If your medical condition is still improving, make sure you remember to make the claim.

## **Chapter 12: Vocational Assistance When Your Injury Prevents Returning to the Same Work**

You may find that the permanent impact of your injuries prevent you from ever returning to your pre-injury job. If so, you are entitled to vocational rehabilitation assistance and benefits. These benefits include paying you two thirds of your average weekly wage (up to a maximum of \$998.00 for injuries in 2014) while you are in the vocational process and not working elsewhere.

Vocational rehabilitation is all about finding "Suitable Gainful Employment." *Employment* is a job. *Gainful* is one that pays money, so the real question is what is *suitable*? When you're receiving vocational rehabilitation benefits, you work with a vocational counselor to try and find a job that you can do. The vocational counselor does not work for the insurance company, but ultimately does get paid by them.

The vocational counselor is required to develop a vocational plan. Vocational plans usually involve finding you a job in another industry, but can include, where necessary and appropriate, up to two years of training or schooling. The counselor will take into consideration your:

- Age
- Past work history
- Past education
- Transferable skills
- Physical limitations from your injury

- Your interests

Unfortunately, there are no guarantees in vocational rehabilitation:

- (1) No guarantee to a job with the same company;
- (2) No guarantee to a job making the same amount of money as you did before; and
- (3) No guarantee to a job that you want or like.

In today's economy it's hard enough to find a job if you are not injured. But unfortunately the outlook is even worse if you have permanent injuries that restrict your activities.

While receiving vocational rehabilitation benefits, it's important to do everything that the vocational counselor says so that your benefits continue. If you disagree with what is requested of you, let your attorney (hopefully by now you have one) make the argument. However, it's important for YOU to actively work towards finding a job. If you sit and just wait for the insurance company to help you out, you will not be able to tilt the process favorably in your direction.

By looking for work on your own, and finding a job or a reasonable training program for yourself, you're more likely to find the best situation for you. As a result:

- It is more likely you will get a job in an industry you want it to be in.
- It is more likely going to be a job that pays you what you need or gives you a better opportunity for the future.
- It's more likely going to be a job that you like!

In the end, if you end up with a poorly paying job, your permanent disability award may take that into account. If you end up with a high paying job you like, then the process has worked. Either way, you will benefit. The only way you will not benefit at all is if the insurance company is able to point to your conduct as a factor in the process failing. That's fine with them.

Don't give them that opportunity.

## **Chapter 13: Permanent Disability Benefit Claims**

If your injury causes you any permanent physical problems, no matter how slight, you may be entitled to receive permanent disability benefits. The benefits you receive are based on the percentage of disability determined by the Workers' Compensation Commission.

If your injury involves your arm, leg, hearing or vision, the Commissioner will be most influenced by permanent disability reports provided by physicians. Physicians are required to use the appropriate version of the American Medical Association's "Guides to the Evaluation of

Permanent Impairment" to determine anatomic disability. Physicians may add to that number by considering the following additional factors:

- Pain
- Weakness
- Atrophy
- Loss of use
- Loss of endurance

I am sure you will not be surprised that the evaluating physicians selected by the insurance company frequently refuse to add any additional disability based on the five additional factors mandated by Maryland law. This is a trick that unrepresented claimants often fall for. The insurance company will obtain a low rating from one of their stable of physicians and then they will magnanimously agree to make payments based on that evaluating report.

If the injury involves your back, neck, head or more than one body part, the Workers' Compensation Commissioner will base an award of permanent disability on your industrial loss. The award in an industrial loss case can be greater or less than the medical ratings. The Commissioner will take into account:

- Permanent disability ratings by physicians
- Your age
- Your education
- Your prior work experience
- The effect of the injury on your ability to earn wages

Each body part is worth a different maximum number of weeks of benefits. You will receive a specified number of benefit weeks (on top of your regular salary and any money paid while you were on TT or vocational rehabilitation) based on:

1. The percentage awarded for your injury multiplied by -
2. The maximum number of weeks permitted for that body part by law (hearing loss is calculated differently).

For example, your leg has a maximum value of 300 disability benefit weeks if amputated or paralyzed. A finding of 20% permanent disability of the leg would result in a payment of 60 weeks of permanency benefits ( $300 * .20$ ).

The award is then reduced by any disability percentage apportioned to a previous injury. Unfortunately, the Commission frequently reduces awards by a small amount for arthritis and other conditions even if they have never caused you any pain or other problems.

The amount of money awarded for your permanent disability depends on:

1. Which body part(s) you injured
2. The percentage award
3. Whether or not you are a public safety officer entitled to higher benefits in certain circumstances
4. Your average weekly wage

There are four different types of permanency awards:

- First tier (under 75 weeks)
- Second tier (75-249 weeks) or public safety officials or awards involving the big toe or any finger
- Serious disability
- Permanent total disability

Your permanent disability award will be paid at the following rate depending on the year of the injury, your average weekly wage and the number of weeks awarded – see the following:

- First tier - One third of your average weekly wage not to exceed one-sixth of Maryland's average weekly wage up to a maximum of \$167.00/week (for injuries between January 1, 2014 and before January 1, 2015);
- Second tier - Two thirds of your average weekly wage not to exceed one third of Maryland's average weekly wage for the year you were injured. The maximum has increased each year (2014 injury is \$333.00 per week).
- Serious disability - Two thirds of your average weekly wage not to exceed three quarters of Maryland's average weekly wage plus an additional bonus of another one third of the weeks awarded to you (2014 injury is \$749.00 per week).
- Permanent total - Two thirds of your average weekly wage not to exceed Maryland's average weekly wage (2014 was \$998.00). In addition, you receive cost of living increases.

If you are not feeling any physical pain, but your injury has left you with a scar, you may be entitled to an award for disfigurement. Injuries such as cuts and dog bites often result in these types of claims. What may seem a small inconsequential scar entitles you to payments of a thousand dollars or more.

Awards for scars are for a number of weeks based on the size and location of the scar. Although a Commissioner may award up to 156 weeks, the awards tend to be in the 1-20 week range unless the scar is extremely bad, as is often the case with burns. A Commissioner may not award benefits for scars on the same part of your body that also was the basis for a permanent disability award.



As you can see, the initial determination of average weekly wage may have a large effect on what you ultimately receive for permanent disability! The award will be paid to you weekly beginning the day you stopped receiving benefits for being out of work.

You should also be aware that permanent disability awards are not paid in a lump sum. Instead they are paid either weekly or bi-weekly, but are back dated to the day after you last received temporary total or temporary partial benefits. For example:

- If you receive a 100 week permanent disability award on January 1
- If six months earlier (26 weeks earlier) you returned to work and stopped receiving temporary total disability benefits
- **Then** your first check will be for 26 weeks of disability and the remaining 74 weeks will be paid weekly or biweekly (minus your attorney's costs and approved fee)

There are at least three vitally important reasons for you to claim permanent disability benefits if you are eligible for them. They are:

- You will potentially receive thousands of dollars of tax free money for your injury.
- You may only receive additional monetary benefits ("compensation" is the legal term) for time out of work or a worsening of your permanent condition within five years of the last time you received money from the insurance company other than the payment of medical bills or vocational expenses. Therefore, if you fail to claim permanent disability benefits you are significantly shortening the time in which the insurer may be responsible to you if your condition worsens.
- You will have the added protection of a legally binding decision that you have sustained permanent injuries from the accident. This is extremely important if you need medical treatment in the future. Without a finding of permanent disability, the employer will surely object to any future medical care if there has been a gap in treatment of several months or years.

## Chapter 14: Settlements

If your injury has been accepted as a Maryland workers' Compensation claim, you have lifetime rights to medical treatment and the right to claim monetary benefits and vocational rehabilitation benefits, as previously described in this eBook. Your right to claim monetary benefits extends five years from the last day you received compensation benefits previously. *Compensation benefits do not mean medical benefits.*

If you settle your workers' compensation case, you are closing some or all of your future rights. There is no requirement to ever settle your case. Permanent disability awards pay you money in addition to what you received while you were unable to work and you keep your future rights to benefits. Settlements trade your future rights for certainty now. That certainty may come in the form of a lump sum of money or periodic payments. A settlement usually closes your right to medical treatment, but it does not have to.

Settlements are often recommended by attorneys when your case is contested and there is a chance you will not win. Settlements also occur when there is a major difference of opinion as to how much permanent disability benefit you should be paid or if there is little likelihood you will need medical treatment in the future. Alternatively, there may be other reasons why it benefits you to receive money in a lump sum rather than have future protection.

If the settlement closes your right to claim medical treatment, there must be a specified amount of money designated within the settlement agreement to pay your future medical bills. It should be based on medical reports from your physicians, although in less serious cases of younger individuals, this best practice is routinely not closely followed.

Settlements may occur at any stage in your case. They frequently come into play after a Commission award has been appealed, but before the trial is scheduled. They are often the outcome of mediations required by the Court. However, the decision whether or not to enter into a settlement is entirely yours.

No settlement is final without the approval of the Workers' Compensation Commission. This process can sometimes take several weeks. The Commission has the right to reject a settlement because some details are missing or if the Commission does not feel it is in your best interest. If the Commission has a concern with the amount of the settlement it will usually set the matter in for a hearing where you and your attorney will be given an opportunity to explain why it is fair.

Many settlements now include a "Medicare Set-Aside Trust". This has come to pass because Medicare has become very aggressive in refusing to pay medical treatment it believes is related to workers' compensation claims. Therefore, all settlements must take Medicare's actual or potential interests into account. If you are already a Medicare recipient and the settlement is for more than \$25,000.00 (including money you previously received) or if you are likely to be a Medicare recipient within 30 months of the settlement date and the settlement is for more than \$250,000 (including money previously paid to you), Medicare has created a facility to review the paperwork to make sure that Medicare's interests have been taken into account. This process can take as much as six months.

## **Part C. – What to Watch Out For**

### **Chapter 15: Red Flags for the Insurance Company**

Whenever something happens that is different than normal it raises a red flag for the insurance company. Once the flag is raised, it is very hard to get them to lower it. It results in increased difficulty in getting treatment approved, hiring private investigators, and an overall stubborn resistance to resolving your claim without a hard fight.

What can you do to lessen the chance of the insurance company labeling your case for increased scrutiny? Be sure to:

- *Not call the insurance company and scream, yell or threaten – no matter how frustrated or justified you are.*
- Do not miss appointments with doctors they have selected to evaluate you (not for treatment) or vocational rehabilitation counselors.
- Don't miss scheduled physical therapy appointments.
- Do your best to return to work as soon as you can.
- Do not change medical providers frequently.
- Don't post anything on Facebook that you do not want everybody to see.
- Remember, the old phrase, "Loose lips sink ships", is certainly true of Workers' Compensation claims. Don't be loose with your information and sink your compensation ship.

On the other hand, don't be overly concerned about what the insurance company thinks of you. Every injury and every person is different. Some recover faster, some slower. You just need to control what is in your power.

## **Chapter 16: Mistakes Injured Workers Make**

Mistakes come in four categories:

- Failing to report injuries
- Lying
- Failing to cooperate
- Over treating

### Failing to Report Your Injury

If you don't report your injury immediately after it occurs, or at worst the next day, you have placed yourself in a position in which you have to be believed. In addition, when you first seek medical treatment if you do not clearly tell the doctor how you were injured while working, the insurance company will deny your claim.

### Lying or Exaggerating

There is no faster way to destroy an otherwise good case than to lie or exaggerate to any person you come in contact with as part of your case. Examples are:

- 1) Doctor – Failing to give an accurate history of your past injuries and your present complaints.
- 2) Your attorney – Failing to trust your attorney with everything means you will not receive the proper advice, and it will be your fault. Many problems can be corrected by your attorney as long as your attorney knows about them in advance, instead of learning about them for the first time at a hearing as part of the other side's evidence. In this

information rich age, you should assume the insurance company knows a lot more about you than you think.

- 3) Workers' Compensation Commissioner – If you lie or exaggerate to the Commissioner, at best you will receive less benefits, frequently you will get none, and you might be referred for a fraud investigation and criminal prosecution. Don't do it!
- 4) Your conduct – Collecting temporary total benefits while working another job, or collecting temporary partial benefits while working two jobs is against the law. It could result in a criminal conviction, the end of your case and collection of wrongfully paid benefits.

### Failing to Cooperate

Usually this takes the form of failing to attend medical and vocational rehabilitation appointments. If your case goes to a hearing, Commissioners may excuse one or two missed appointments, but they will never excuse a pattern.

Try hard to return to work as soon as possible. The longer you are out of work the more difficult it will be to return. When you do, do your best. The insurer and your employer will be very alert to you working less effectively. At times it can trigger the hiring of private investigators to determine if you are as injured as you say and act while at work.

Sometimes your physician will recommend a course of treatment you do not want. If you refuse, the law permits the insurance company to seek permission to discontinue benefits based on your failure to co-operate with medical advice. This rarely occurs and is rarely upheld by a Commissioner.

### Over Treating

- 1) Prescription Abuse – There is no faster way to destroy your future than abusing the present. Never get duplicate prescriptions from multiple doctors. Don't take more medication than is prescribed and don't lose your medication. Lost medication results in unscheduled refills and raises a concern you are taking too much or alternatively selling the medication.
- 2) Returning for medical treatment that is clearly not doing you any good.
- 3) Constantly changing doctors.

## **Chapter 17: Insurance Company Tactics – IMEs**

The law permits insurance companies to require that you permit a doctor of their choice examine and evaluate your condition. These exams are called an IME (Independent Medical Exam). Of course, there is nothing independent about it. IME really stands for "insurance medical exam". The IME doctor is not going to provide you with any treatment. The doctor will only give an opinion, frequently unfavorable to you.

However, as long as their request is reasonable, you must go. The Maryland Workers' Compensation Commission is unsympathetic to any refusal to attend.

You need to know the following 10 things about IME's:

1. Everything you tell, or fail to tell the IME doctor, will be contained in their report.
2. You are not required to bring any test results or medical records with you – even if the letter you receive scheduling the appointment requests that you do.
3. Never lie or exaggerate, but rather be specific about what pain you feel or limitations you experience. The IME doctor and his staff will watch how you walk, move, whether you bend down to tie your shoes or pick up a piece of paper you might have dropped, or how you remove a piece of clothing. They will compare it to the complaints you tell them about during the exam and what is contained in your medical records. They will note any discrepancy.
4. Tell the IME doctor about any other accidents you were involved in before or after your work-related injury. Failing to do so hurts your credibility. A defense attorney will use that failure to make it look like you are hiding information.
5. Do not miss your appointment or arrive late. The IME doctor will not be flexible. If the examination does not occur, the insurance company may terminate your benefits and the Workers' Compensation Commission may order you to pay for the missed appointment and/or refuse to hear your case.
6. The IME doctor does not have the right to perform any invasive tests on you, such as x-rays, injections or EMG/nerve conduction studies.
7. Typically an IME doctor will have a female member of his staff in the room during the examination if you are a female and the IME doctor is male. If not, you may insist on it.
8. The examination will likely be very short (a few minutes), so it's important that you be as comprehensive as possible about the complaints you have.
9. Insurance companies often hire a private investigator to videotape you on the day of your IME. They will follow you in hopes of "catching you" doing something that is inconsistent with what you tell the IME doctor.
10. Do not argue or fight with the IME doctor. Be friendly. Expect the doctor to be unsympathetic and uninterested in what you say. Your best chance to get a favorable evaluation is by being friendly and forthright. The more you argue or be obstructive, the worse the report will be.

## **Chapter 18: Insurance Company Tactics – Private Investigators**

Yes, they are used by insurance companies.

They will follow you, film you, and investigate you. They will make phone calls or personal appearances posing as someone else. They will hide in vans with windows that will not allow you to see in. They are a legal tool of the insurance company.

They are effective.

Sometimes the information they uncover will just be used by the insurance company as the basis to deny you benefits. The insurance company attorney does not need to notify your attorney about the information that has been gathered by investigating you. Usually, it is sprung as a surprise at a Workers' Compensation hearing. Whenever you are asked a specific question during the hearing, such as "Do you carry grocery bags or work on your car?" – You can be sure the insurance company attorney has pictures of you doing it.

Many times investigator films will not hurt you, sometimes they will help you, and often they are not used. They only have an impact if they clearly show you have been dishonest. Your best protection is to tell the truth whenever testifying or speaking to a physician. If asked, do you carry weights or bend, be honest if you do. But be sure to tell the physical aftereffects on you of doing too much.

You should anticipate that an investigator is following you every time you are scheduled for a medical exam requested by the insurance company. That is because they know you will be outside and exactly where and when at a particular time. This makes it easier to find and follow you.

The longer you are out of work the greater is the chance an investigator will be used by the insurance company. They are rarely used once you have returned to your prior job and are not asking for a new form of medical treatment. Based on my experience, specific scenarios that increase the likelihood of an investigator are when:

- An angry present or former spouse calls the insurance company and suggests you are lying in some way.
- Your home or cell phone recording makes reference to a home business, thus giving the insurance company an inference that you are working a second job and collecting benefits at the same time.
- Your co-employees or your employer are suspicious you are not honest and report their concerns to the insurance company.
- You have put information on your Facebook page, or that others have on their Facebook pages that suggests you are being dishonest – such as pictures of you engaging in activities (dancing is a frequent one) different from the limitations placed on you by your doctors.
- Conservative medical treatment continuing more than six months after your injury or more than six months after your surgery.

## Part D – Resolving Disputes

### Chapter 19: Workers Compensation Hearings

A hearing is normally requested by filing the appropriate form (H24R issues form) with the Worker's Compensation Commission. The Commission will issue a "Notice of Issues" form immediately after it receives a request for a hearing, but it will not notify you of the date until several weeks or even months later.

The Commission will schedule your hearing at one of seven locations depending on where you live. They are:

- Abingdon (two hearing rooms)
- Baltimore (four hearing rooms)
- Beltsville (three hearing rooms)
- Cambridge (one hearing room)
- Frederick (one hearing room)
- La Plata (one hearing room)
- La Vale (one hearing room)

The law requires that a hearing be scheduled without unreasonable delay. Cases are generally held within three to four months of when a hearing is requested, but at times it will be more or less.

#### Emergency Hearings

If the dispute is over vocational rehabilitation there is an expedited process that can get your case heard on only that issue within two weeks of when a special form is filed.

You also have the right to request an emergency hearing. However, they are almost never granted. The only chance is if your claim is for temporary total benefits, urgent medical care, or other significant circumstances that cause a unique hardship when compared to all other people requesting hearings with similar problems. The request needs to be supported by both medical and other documentation that support the unique urgency of the request. Even then the Commission rarely will agree to give your case priority over all others.

#### Bad Weather

If schools are cancelled for the location (County or Baltimore City) where the hearing is scheduled then your hearing is postponed for another day automatically. Two hour school delays generally do not cause a continuance, but the Commission will usually be sympathetic if you are late. Nevertheless, you should always check the Workers' Compensation Commission web site, <http://www.wcc.state.md.us/> before you do not show up.

#### What Should You Do?

First and foremost, dress respectfully. This does not mean a jacket and tie or a formal dress. However, it does mean clean and not disorderly. If you normally wear a uniform, a uniform is appropriate but not necessary. Blue jeans, excessive jewelry, hats, and high heels are not appropriate.

All cases are scheduled at 9:30 AM unless specially set. This means there may be 15 or 20 cases scheduled at the same time. When you arrive at the hearing site take a look at the hearing schedule that is posted in a glass case outside of the hearing room (in Baltimore it is also on a monitor). This will tell you the planned order that the cases will be called.

Nine Commissioners are randomly assigned to hear the cases. They rotate between hearing locations and switch assignments at the last minute and even on the day of your hearing. Therefore, even though you may be scheduled to have your case heard in front of one Commissioner in a particular hearing room, things change as the morning wears on. The order cases are called changes because:

- Attorneys are scheduled in multiple locations and are accommodated.
- If the hearing location has multiple hearing rooms, your case may be called out of turn when your attorney and the defense attorney are in the same room.
- Cases that require translators go first.
- Generally, but not always, the Commission calls police and fire fighter cases first.
- Commissioners may have scheduling issues of their own.
- Commissioners may have conflicts due to their prior employment that prevent them from hearing your case.
- Particular cases may require heightened security or be of special sensitivity.

If you have an attorney, the attorney will usually arrange to meet you outside of the hearing room. There are seats provided for you to use and all of the hearing sites (except for La Vale) have conference rooms as well.

#### Hearing Rooms

A Workers' Compensation Commissioner does not wear a robe. But the Commissioner does sit at a podium (except for La vale because the site is presently at a hotel). In front of the Commissioner is a table for the Court Reporter who transcribes the testimony. In front of the reporter are tables and chairs for the attorneys and you. To the side of the Commissioner is a place for witnesses to sit when they testify. Behind the attorneys are several rows of seats where other injured workers and witnesses wait until their case is called. Only in truly sensitive situations will the room be cleared of people other than those involved in the case.

In addition, plain clothes security is present at all hearing locations. They will act as bailiffs, ensure that everybody acts appropriately, and do anything required to make sure that the hearings run in an orderly manner.



The Commissioner will begin the proceedings with a short statement explaining the process and asking that all cell phones be turned off. The Commissioner will then call the cases in that hearing room. Attorneys will answer if their clients are there and if you do not have an attorney you should answer. If you are unrepresented, you will be given the option at that point to have your case continued one time so you can get an attorney. You should take advantage of that opportunity.

Attorneys will also advise the Commissioner when their case is called if there is a preliminary matter that the Commission can dispose with quickly. Usually they are continuance requests, notifications of settlements and agreements for orders that the Commissioner can pass without testimony.

#### What happens When Your Case is Called?

When your case is called, your attorney will sit at the desk closest to where witnesses testify and you will be directed to the witness chair. The Commissioner then confirms that the file accurately reflects your address, asks what the issues are and obtains preliminary information not in dispute from the attorneys. The attorneys then submit medical records and other evidence. Each side will get a copy of the other side's written evidence. Your attorney will also submit a fee petition signed by you that acknowledges you are aware the Commissioner will award an attorney fee and reimbursement of case costs out of any money the Commissioner orders paid to you.

The Commissioner will then administer an oath to you. This means you are swearing the testimony you provide will be the truth. If you lie, you could be subject to criminal prosecution in addition to jeopardizing your case.

Usually, unless it is part of the dispute in your case, your attorney will lead you through preliminary testimony such as how the accident happened and a brief summary of the medical treatment you received. You will then respond to questions your attorney asks you. Your attorney cannot lead you at this point so it is important to listen to each question and answer it fully. However, it is equally important that you do not embellish. The Commissioner hears up to 15 cases every day. The Commissioner tries to finish all cases before lunch. Unless there is something extraordinary about your case, the Commissioner will want your case to take fifteen minutes or less. Therefore, you must be brief but complete. You should also look at the Commissioner when responding to every question.

After your attorney is finished asking questions, the insurance company's attorney has an opportunity to cross-examine you. It is very important you:

- Only answer the question that is asked.
- Respond truthfully.
- Be aware that if asked whether you have done a specific thing, the defense attorney probably has evidence you have.
- Do not argue with the defense attorney.

Most cases end at that point. Sometimes the defense attorney will have a witness (usually a representative of your company, your co-employee, or a private investigator). Much more rarely, your attorney will call a witness other than you. Doctors never testify. Their information comes into evidence through their reports. Commissioners also do not want duplicative testimony from other witnesses, only something different from testimony already heard.

At the end of the case, the Commissioner will permit the attorneys to argue points of law or fact but rarely invites it and even more rarely wants to hear it. Do not judge your attorney by the vigor of their argument. An experienced attorney tailors their case, presentation and demeanor to the facts, law and Commissioner presiding that day. Each Commissioner has different preferences how cases should proceed and responds differently to specific styles of argument.

When the case is over, you will leave the hearing room. A decision will not be announced. It will come by way of a written Order sent to you and your attorney (if you have one). It usually takes one to three weeks to get the Order. There is no way to hurry it up and you should not read any meaning into any delay.

## **Chapter 20: Appealing Workers' Compensation Commissioner Decisions**

There are two methods for appealing a Workers' Compensation decision. The first is a Request for a Rehearing. The second is by filing an appeal.

### Request for a Rehearing

You have 15 days from the date of a Workers' Compensation Commission Order to ask for a rehearing. You may do so based on an error of law or newly discovered evidence. As a practical matter, the Commission rarely grants a rehearing. This process is better used only when there is a technical error, not when you disagree with the decision.

### Filing An Appeal

You have thirty days from the date the Workers' Compensation Commission mails their Order to file an appeal. It is best if you consider the date of the Order as the date it was mailed.

An appeal must be filed in a Circuit Court. The rules are very technical as to which one (County, or Baltimore City) is appropriate.

You must also decide when an appeal is filed whether or not to request a jury trial. If you do not, your case will be decided by a Judge.

The side appealing the case has the burden of proving the Commission Order was wrong. There is also a presumption that the Commission was correct. This means if you received a favorable Order from the Workers' Compensation Commission, and the insurance company appeals, in most cases you will not have to present any evidence, even though in almost all circumstances you should. The presumption that the Commission is correct is, in a sense, evidence. But, if you

lost at the Commission level, you will be required to overcome the presumption at the trial court level. To do so, you must present evidence.

The main exception to having to present evidence is if the issue on appeal is strictly an issue of law not fact. In those cases the matter is decided by a Judge based on a Summary Judgment motion, accompanying affidavits, and any opposition filed. Usually, but not always, the judge will not make a decision until after hearing oral argument from both sides.

Appeals, unlike Workers' Compensation hearings, are formal. The rules of evidence are strictly enforced. This means that you, or your attorney, must pay for doctors to testify. Medical reports, other than hospital records, usually are not permitted into evidence if there is an objection by one side. The typical cost in 2014 for doctors to testify at trial is two to three thousand dollars.

Frequently, instead of having the doctor come to trial, they are videotaped. The expense is often less, and there is less risk of increased expenses or unavailability of the doctor if the case is continued or delayed. An added advantage is that your lawyer will know what the testimony is, but the disadvantages are:

- So will the other side.
- If a question is not asked correctly so that evidence is excluded it may be impossible to correct it, whereas if the witness is present at trial the question can be asked in a different way.
- If the video deposition is too long, a jury may be less attentive than if the doctor is a live witness before the jury.

Even so, most attorneys for both the injured worker and the insurance company opt for videotaping depositions. It is a simple fact of life that getting a doctor to arrive at trial when a Judge wants the testimony to be presented is a difficult and sometimes impossible task. The costs of a video deposition in 2014 are approximately:

- 1) Doctor – \$1,200 to \$2,000;
- 2) Videographer - \$500.00; and
- 3) Court reporter - \$300.00 to \$500.00

Usually, the courthouse will have the capability for the lawyer to play a videotape at no cost. However, if your lawyer chooses to have the video recording played by a technician it can cost another \$500.00.

Workers' Compensation trials generally are not heard until a year after the date of appeal from the Commission Order. There is a significant chance the case will be continued once; either because of the attorneys' schedule or the Court's. Most jurisdictions at least offer, and some require, a mediation to try to resolve the case. It is in your benefit to attend the mediation, but you cannot be forced to settle your case.

The trial usually takes one or two days. It ends with a verdict. So, unlike a Workers' Compensation hearing, you will know how you did immediately after the trial is over.

During the trial you will be seated next to your attorney. Although it is not necessary to wear a tie or a dress, you should dress cleanly and respectfully. Women should not wear high heels or provocative clothing. A jury trial proceeds in the following manner:

- 1) A jury is selected after being asked questions by the Judge based on questions submitted to the judge by the attorneys. The questions are designed to learn more about the prospective jurors and their bias. Each side receives a certain number of "strikes". The Judge will usually select six jurors and one or two alternates from those jurors remaining after excluding the jurors stricken by the attorneys.
- 2) Whoever filed the appeal gives the first opening statement to the jury. The other side then gives their opening statement.
- 3) Whoever filed the appeal presents their evidence, and then the other side. Generally, you will be asked by your attorney to testify and both your attorney and the other side will present medical evidence by videotape. If permanent disability is an issue, a vocational expert may be asked to testify by either side as well. If the insurance company has hired a private investigator, their attorney may show movies of you.
- 4) After all the evidence is presented by both sides, by the Judge will instruct the jury as to what the law is.
- 5) At the end of the case, whoever filed the appeal will give the first closing argument, followed by the other side and then the attorney for the party who filed the appeal gets a final word.
- 6) The jury will then leave the room until they reach a verdict.

## Part E: Other Claims

### Chapter 21: What if Somebody was Negligent?

The important issue is who was negligent. You should know that:

- If *you* were, you are entitled to workers' compensation.
- If your *employer or a supervisor acting in a supervisory capacity* was negligent, they may **not** be sued if they have workers' compensation insurance. If they do not have workers' compensation insurance and you elect not to pursue a workers' compensation claim, they may be sued.
- If the *general contractor* at your job site was negligent, the general contractor may **not** be sued.
- If a *co-employee was negligent* you **may** file a negligence law suit against the co-employee in addition to your workers' compensation claim.

- if *somebody not connected with your employer was negligent*, you **may** file a negligence law suit against them in addition to your workers' compensation claim. An example of this is if your job is to drive a truck and you are in a car accident, you may file a workers' compensation claim and file suit against the person that caused the accident.

When you are entitled to file a negligence claim (the last two bullet points above) you will be able to claim actual damages (lost wages and medical bills past and future), as well as pain and suffering and the possible impact of the injury on your marital relationship.

However, the employer/insurer has what is called a lien on any benefits you receive by pursuing the negligence claim. This means that to the extent you received workers' compensation benefits in the past, they must be paid back to your employer/insurer. Furthermore, the employer/insurer does not need to pay any future benefits to you until the amount you received, after attorney's fees and costs in the negligence case is less than what you will be entitled to in the workers' compensation case.

Sometimes your negligence claim is worth more than your workers' compensation claim. Sometimes it is worth less.

So why always file both claims? The answer is:

- 1) Everything is negotiable. Your attorney can make many arguments why the workers' compensation insurer should take less than what they are entitled to by law.
- 2) Your negligence case can sometimes be settled in a way that shields some benefits from workers compensation liens.
- 3) Your negligence case provides the opportunity for full compensation for your damages, but frequently takes a long time, has an uncertain outcome, and can never be re-opened if your condition worsens.
- 4) Your workers' compensation case provides you with partial compensation for your losses and future protection.

It is the task of your attorney to use the possibilities provided by both claims to provide more benefit to you together than either one alone. **This is a good reason why the same attorney should handle both claims.**

You must also be aware that if you resolve your negligence claim before a workers' compensation claim is filed, you probably will be precluded from filing a claim for workers' compensation afterwards. In other circumstances, your right to benefits may be significantly diminished if the workers' compensation claim and the negligence claim are not coordinated.

Attorney fees for your negligence claim usually are in the range of 33% to 40% of what you recover. The workers' compensation insurer or employer will have to pay their fair share (pro rata share) of the attorney fee and costs in the case. Their fair share is a percentage of the "lien" they recover. The important principle to remember is that you only pay a percentage of the recovery to your attorney.

## Chapter 22: Social Security Disability

If your medical condition prevents you from being able to work any job for at least a year, you should consider applying for Social Security Disability Benefits (SSD). If you qualify you may be eligible to receive money from the Federal Government in addition to the Workers' Compensation benefits you receive from the insurance company.

### Do You Qualify?

The Social Security Administration (SSA) decides whether you qualify. In simple terms, it uses the following five step process:

- 1) Have you been unable to work for at least 12 months?
- 2) Do you have a severe medical impairment?
- 3) Is your medical impairment sufficient to meet any of the automatic "listings" that mandate eligibility? If yes, you qualify.
- 4) If your condition does not meet the requirements of the "listings" are you physically able to return to any of the jobs you performed in the last 15 years?
- 5) If the answer to question #4 is no, are there any other jobs in the national economy that you have the physical capacity to do, whether or not there is a high or low likelihood you will be hired. The SSA will consider your age, education and skills when making that determination.

An extremely useful resource for learning more is David Galinis' blog at <http://ssblog.bsgfdlaw.com/> or call David at 301-670-7030 (David is a partner at Berman, Sobin, Gross, Feldman & Darby LLP that focuses on Social Security Disability claims).

### What Will You Get If You Qualify?

Social Security Benefits are based on their determination of your Current Wage Earnings. They use multiple formulas and grant you the highest amount. If you are not receiving Workers' Compensation benefits, the benefits usually are a few hundred to more than two thousand dollars a month if you have a long history of earning a significant salary. For most workers' compensation recipients, the range of SSD benefits I generally see is between \$750.00 and \$1500.00 a month. In addition, after two years of eligibility, you are entitled to Medicare benefits. If you have lost your medical insurance, Medicare eligibility will be of great benefit to you.

There is one catch. Your SSD benefits may be reduced by your Workers' Compensation payments. This is because you may not receive more than 80% of your Current Wage Earnings after combining your SSD entitlement with the amount you receive from Workers'

Compensation. Therefore, if your Current Wage Earnings is \$3,000.00, 80% of that is \$2,400.00. If you are receiving \$2,000.00 a month in workers' compensation benefits, you only will get \$400.00 a month from SSD. Of course, if your workers' compensation benefits are cut-off or are reduced, you are eligible for an increased payment from SSD. In addition you will receive in full any SSD cost of living increases.

#### Issues To Be Aware of When Filing For SSD

The negative impact of filing for SSD generally does not outweigh the benefits of filing. However you should be aware that:

- A tax rule exists that in some instances results in the net benefit of workers' compensation benefits plus SSD benefits to be less than if you don't file for SSD benefits at all (this does not include the value of qualifying for Medicare benefits).
- When applying for SSD benefits, you put all of your medical conditions on your applications, not just the injuries you sustained on the job. The insurance company has the right to obtain a copy of your application. To the extent you emphasized other medical conditions; the insurance company can use it to defend against your workers' compensation claim.
- Some vocational rehabilitation counselors and Workers' Compensation Commissioners view the mere fact that you have filed for SSD benefits as an indication that you have no interest in returning to work. This can work against you when they believe you have the capacity to do so. However, the longer you wait, the less in back due benefits you may be able to collect.

### **Chapter 23: Unemployment Insurance Claims**

You should never attempt to claim unemployment benefits at the same time you are receiving temporary total, temporary partial or vocational rehabilitation benefits. This is because your claim for unemployment benefits is based on:

1. The fact that you were fired or laid off; and
2. You are actively physically capable of working.

A claim for temporary total benefits is based on the fact that you cannot work. A claim for temporary partial benefits is based on the fact that your medical condition prevents you from returning to the full range of your formal duties. They are seemingly inconsistent with unemployment benefits. That is how the Workers' Compensation Commission usually views it and that is certainly how the insurance company will see it as well.

If the insurance company discovers that you have applied, let alone are receiving unemployment benefits, they will stop paying you for being unable to work. You can also be

certain that they will find out you have applied because the Unemployment Insurance Office sends a notice to former employers when a claim is filed.

Having said all this, do I think the law is clear on this issue? The answer is no. There are no appellate opinions on point. In fact, I believe there are certain instances where you may be entitled to both unemployment benefits and workers' compensation benefits at the same time. However, the path to win that point is so perilous, so long and so uncertain, it is not worth trying to double dip.

There is, however, one time when you clearly can receive workers' compensation benefits and unemployment insurance benefits. That is when you are receiving permanent disability benefits for a finding less than permanent total disability. This is because you are not taking a position that you are unable to do any kind of work.

## **Chapter 24: Employment Rights Violations**

The Maryland Workers' Compensation Act is neither a sword nor a shield for employment laws. This means you are free to assert any of your employment related claims against your employer, but the Workers' Compensation Commission will not help you.

The Workers' Compensation Commission has no authority to order the employer to re-instate you if you are fired or treat you better when you are mistreated. All it can do is order benefits be paid to you that are available as part of a workers' compensation claim. If you feel you have been discriminated against because of your disability, you may want to consider exploring an American Disability Act (ADA) claim. You may also have some job protection as a result of the Family and Medical leave Act (FMLA). However, to make a claim under either of these Federal statutes or their Maryland counterparts, the Workers' Compensation Commission is not the proper forum, and the filing of a workers' compensation claim does not satisfy the filing requirements of those claims.

Other protections provided by Federal or State laws may be available to you as well. They have separate procedures, time deadlines, forums to resolve the claim, and damages available to be awarded.

It is imperative you seek the advice of an attorney familiar with employment rights violations should you want to pursue such a case.

## **Part F: Final Thoughts**

## **Chapter 25: Hiring an Attorney**

You should hire an attorney, or at least consult with one, if you have been injured at work. Your need for an attorney significantly increases if your injury:

- Requires medical treatment.



- Does not completely heal overnight.
- Requires you to miss time from work.
- Aggravated a pre-existing work related medical condition.
- Was caused by somebody's negligence other than your employer.

Do not be fooled by the fact you have been dealing with the insurance company's adjuster without any problems (for now). Problems will almost certainly arise in the future, but the means to resolve may diminish the more you handle the claim yourself.

Insurance company adjusters frequently ask questions in a way that encourages people to reveal more information than is needed or required. They then may use that information against you later on. For example, you may be asked if you have ever been injured before. This might cause you to innocently tell the adjuster your entire medical history instead of limiting the information to the area of your body that was just injured.

The insurance adjuster might take a recorded statement from you. The adjuster will do it in order to find information to use against you. Otherwise, why record it? In addition, here's how I see it:

- Insurance company adjusters have access to lawyers who keep them current on the law. Shouldn't you have a lawyer to advise you too?
- Your employer pays insurance premiums to be protected by the insurance company from your workers' compensation claim. The insurance company's lawyers advise your employer as well as the insurance company. If your employer has a lawyer, shouldn't you?

An attorney may not charge you anything up front to represent you in a Maryland Workers' Compensation case. Your attorney can only be paid a percentage of the compensation awarded in your case. Fees are generally:

- 20% of any permanent disability awarded (less if more than 75 weeks are awarded)
- 10% of any past due temporary total or partial disability awarded
- 20% or less of any settlement proceeds
- An additional appeal percentage that ranges from 2.5 to 10% depending on the level of appeal and the work performed.

Your attorney can only receive a fee if the Maryland Workers' Compensation Commission approves it based on the schedule listed above. Your lawyer may not separately bill you or charge you for their time. Your attorney will *not receive a fee* if you do not receive compensation.

Your lawyer can assist you with all aspects of your case. This includes obtaining:

- Payments for you to replace your lost wages.
- Your medical records.
- Medical treatment approvals.

Your attorney will represent you before the Workers' Compensation Commission if a hearing is required. Hearings are less formal than a trial but there are many technical aspects that must be navigated properly, including:

- Presenting evidence in the proper manner.
- Cross examining witnesses where required.
- Making appropriate objections.
- Presenting evidence that meets the burden of proof required to win your case.
- Conforming to hearing procedure the Commission requires.

if you do not have an attorney you could miss out on benefits that you don't even know you are entitled too by failing to claim them timely, or at all. They include:

- Temporary total disability benefits based on a correct average weekly wage calculation.
- Permanent disability benefits for the appropriate number of weeks.
- Vocational rehabilitation.
- Mileage reimbursements.
- Medical treatment.
- Settlements.

The bottom line is the insurance company adjuster and their attorneys know the rules of the game, you do not. Would you play poker with a bunch of people you don't know, and without knowing the rules until after you bet? That is what you are doing if you pursue a workers' compensation claim without an attorney.

## **Chapter 26: Should You File a Workers' Compensation Claim?**

The absolute answer is yes. Workers' Compensation provides significant benefits that may be duplicated in part by other insurance but almost never in its entirety. Furthermore, many insurance policies and disability policies have exclusions for work related claims. The last thing you want is to have a benefit paid to you *clawed back* from you in the future when the insurance company discovers that the payments were for a injuries from a work related injury.

It is my experience that very few injuries are recognized for their severity immediately. Back pain today may lead to the need for an operation years later. Even a knee injury requiring a basic meniscus surgery can result in an infection, the need for follow up surgery and a possible knee replacement. The point is, you can never predict the future.

You cannot request a hearing before the Workers' Compensation Commission until approximately a month after you file your claim. Therefore, if you delay and change your mind because you are out of work longer than expected or because your medical treatment is denied by your insurer (or because you lost your job and no longer have insurance), it will take that much longer to obtain benefits. If you wait too long, you will be denied forever.

If you tell your doctor that you were injured on the job, your doctor probably will not agree to treat you without first obtaining approval from the workers' compensation insurer or your medical insurer. Your medical insurer may not pay for job related injuries unless the workers' compensation insurer denies the claim first. If you lie to your doctor about how your injury occurred to avoid this problem – that is obviously wrong. Also, if you lie – it also makes it difficult or impossible to win a claim should you change your mind or tell the truth later because your injury is worse than you thought. Therefore, it is always better to file your workers' compensation claim. The worst thing that can happen is that you lose – then of course your medical insurer will not be able to refuse paying for your treatment because it is as a result of an injury on the job.

Some people fall into the trap of pursuing and resolving negligence claims without first filing a workers' compensation claim. If you do, you may be forever barred from filing a claim in the future.

## **Chapter 27: Frustrations Injured Workers Experience**

You will be frustrated, there is no doubt. Being injured is bad enough. Having to rely on strangers and worrying about their motivations is even worse. Most of your anger will center on:

- Authorization delays for medical treatment and prescriptions.
- Late payments of bills.
- Disability payment checks arriving late or not at all.
- Being told what to do and when.
- Permanent disability payments being paid week by week instead of in a lump sum

Many of the problems are caused by the fact that workers' compensation is an adversarial system. You need help and the insurance company does not want to provide it. When you have medical insurance, you have a contract with another company. You, or your employer, pay money and in return a medical insurer pays certain specified benefits per the insurance contract. When you have a workers' compensation claim, you have a right to claim benefits – not a contract for the benefits to be paid. This is a critical distinction. A workers' compensation insurer has a duty to your employer. The amount the insurance company pays may impact the insurance premium your employer will pay in the future.

### What Can You Do to Minimize Problems?

Keep in mind that the burden is on you to prove the need for every benefit you request. Therefore:

- Never leave a medical provider without a written prescription for any changes in medication or new tests ordered.
- Be careful not to act in a suspicious manner by doing more than the limitations placed on you by your physicians.
- Hire a competent attorney to represent you. Judge their competence not by how much they say they will get you, but by how well they respond to your needs. That does not mean your attorney will always achieve success, especially without a hearing that may take several months to get, but it does mean that they will provide you advice, education, sympathy, access and a prompt response to your needs.
- Be understanding that a workers' compensation claim is a process. There are highs and lows.
- You must comply with the law and regulations. In a sense, your new job is to do everything you can to recover, attend all scheduled appointments, and always give full effort. The perception of your integrity and devotion to recovery is the grease that oils the system.

#### What Can You Do About Late Payments of Disability Checks or Medical Bills?

Late payments of benefits come in two varieties:

- Late payment of voluntary payments
- Late payment of ordered monetary benefits

If the Commission has ordered payment of benefits after a hearing, the insurer has fifteen days to do so. If they fail to pay within fifteen days they are subject to a penalty not to exceed 20%. If they fail to pay within 30 days, the possible penalty increases to 40%. A hearing is often required to resolve the issue, but it is rare that insurers have an acceptable excuse for their failure.

When the payment is voluntary (not ordered by the Commission), there are no satisfactory solutions other than your attorney badgering the insurance company and ultimately, if not resolved, having the matter addressed at a Workers' Compensation hearing. This is because an insurer may have a valid reason for not paying, manufacture an invalid one, or just be incompetent. Late payment of temporary total disability checks is a common Worker's Compensation problem as are failures to pay medical bills. In the end, nothing replaces having a competent aggressive attorney representing you. Nevertheless, your attorney does not write the checks, the insurance company does. No attorney can ensure bills will be paid upon receipt and checks paid timely. Only one thing can be guaranteed, if your case goes long enough you will experience these frustrations.

If a hearing is held and the Commission feels the insurer's failure is inexcusable, your attorney will be granted an attorney fee payable by the insurance company. If a voluntary payment

problem has been rectified, the Commission will not be happy having the case brought in front of it to complain about past conduct. Unfortunately, either with or without a hearing, you will receive nothing other than frustration and anguish when voluntary payments are late – a truly unsatisfactory outcome.

#### What Can You Do To Get A Lump Sum Permanent Disability Award?

The Commission will never issue a permanent disability award that orders all of the benefits to be paid in a lump sum. Having said that, the Commission will consider a Lump Sum Petition filed after the Award. Lump Sum Petitions are generally denied unless you provide a significant reason for it to be granted. To have any chance of succeeding you must attach copies of bills showing past due debts, foreclosure or eviction notices, or some other urgent reason for a lump sum. Merely wanting it, or having a good investment idea, is usually not sufficient.

Frequently, the Commission will set a lump sum request in for a hearing. This is especially true if the insurer objects, which insurers often do. Since hearings often take three or four months to be scheduled, this can be a source of unavoidable frustration for you.

### **Chapter 28: Just When You Thought Your Case was Over**

Your Workers' Compensation case never ends.

#### Your Rights

If you did not settle your case, you have the right to claim more money up to five years from the last day you received compensation benefits. Compensation benefits have been defined by Maryland Courts to mean money for temporary total, temporary partial or permanent disability benefits. It does not mean medical treatment paid by the insurance company.

If the last compensation benefits you received were permanent disability benefits, you will have to prove your condition has worsened. If you never claimed permanent disability benefits then all you will have to prove is that you now have a permanent disability.

You also have lifetime rights to claim reasonably related medical treatment. The longer it has been since you last received treatment the harder it will be for you to prove the need for treatment is related to your injury on the job. It will be even harder if you never received a permanent disability award.

#### The Medicare Nightmare

Medicare has become very aggressive in asserting that medical care is not payable by them because it is related to an old workers' compensation claim. Often there is no basis for their position, but that does not make life any easier for you. Since the rules and procedures keep changing, it is very difficult to give advice as to what to do that will remain timely. For more information check <http://wcblog.bsgfdlaw.com/>.

## **Chapter 29: Changing the Law**

Three types of laws impact the Workers' Compensation process – statutes, regulations, and Appellate decisions. In addition, the Workers' Compensation Commission develops specific policies that guide them but do not bind them.

### Statutes

The starting point for workers' compensation is statutory law. A statute is a written law. If it is not covered by a statute, it cannot be done, no matter how unfair something may seem to you.

Statutes start as "bills". They are written and voted on by the Maryland Legislature. If both the Maryland House of Delegates and the Maryland Senate approves the "bill" it goes to the Governor. If the Governor signs it, the "bill" becomes law.

Before the legislature votes, testimony is taken from both those in favor of the bill and those against it. This occurs in designated House and Senate Committees and often preliminarily in front of a designated Legislative Oversight Committee.

Lobbyists and special interest groups are heavily involved in the process. As a result, changes often take years.

### Regulation

The Workers' Compensation Commission has the authority to create mandatory regulations. It is the purpose of a regulation to identify and determine precisely how the intent of a statute will be carried out. A regulation cannot create new law. It can only clarify a statute and provide procedures for its implementation.

Before a regulation is enacted, it must be circulated to the general public and hearings are held where anybody may speak in favor or against it. Regulations usually take several months to travel from an idea to reality. As with statutes, lobbyists and special interest groups are heavily involved in the process.

### Appellate Law

Appellate law is created by the Court of Special Appeals, which must hear every appeal, and the Court of Appeals which only hears appeals it chooses to be worthy of consideration (almost always only after the Court of Special Appeals has heard the case). Appellate decisions interpret statutes, regulations, the Constitution and other Appellate cases. The Courts may not create new law (although some criticize them for seemingly doing so), they may only interpret existing law.

### Conclusion

It is my fervent hope that this eBook has helped you understand Maryland Workers' Compensation and avoid its pitfalls. Should you have any questions or concerns please feel free to contact Berman, Sobin, Gross, Feldman & Darby LLP at 301-670-7030.

### **Appendix - Important Links**

- <http://www.bsgfdlaw.com/> - Berman, Sobin, Gross, Feldman & Darby LLP web site
- <http://wcblog.bsgfdlaw.com/> - Workers' Compensation blog
- <http://ssblog.bsgfdlaw.com/> - Social Security Disability blog
- <http://carblog.bsgfdlaw.com/> - Auto Accident blog
- <http://willblog.bsgfdlaw.com/> - Wills and Estate blog
- <http://www.wcc.state.md.us/> - Maryland Workers' Compensation Commission
- <http://www.ssa.gov/disability/> - Social Security Disability web site
- [http://www.wcc.state.md.us/Adjud\\_Claims/Site\\_Locations.html](http://www.wcc.state.md.us/Adjud_Claims/Site_Locations.html) - Workers' Compensation hearing site locations and directions
- [http://www.dsd.state.md.us/comar/subtitle\\_chapters/14\\_Chapters.aspx#Subtitle09](http://www.dsd.state.md.us/comar/subtitle_chapters/14_Chapters.aspx#Subtitle09) – Workers' Compensation Regulations – See Subtitle 9